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June 30, 2023

VIA ECF

Hon. Jennifer L. Rochon
United States District Court,
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Hughes v. NFL*, No. 1:22-cv-10743-JLR

Dear Judge Rochon:

Plaintiff submits the following in response to Defendant's Notice of Supplemental Authority (ECF No. 67).

Defendant asserts that the recent *Spine Media* decision, which issued out of the United States District Court for the Southern District of California, supports dismissal of the VPPA claim against the NFL. While *Spine Media* involved the Video Privacy Protection Act, 18 U.S.C. § 2710, and the Facebook Pixel, its similarities and utility end there. As the *Spine Media* court noted:

Plaintiff admits that he is neither a renter nor a subscriber under the VPPA. Plaintiff alleges that he is a purchaser under the VPPA, because he 'purchased products advertised on Defendant's website by third parties from which Defendant receives direct or indirect compensation.' FAC ¶ 23. Plaintiff appears to admit that he did not purchase anything directly from third parties. It begs the question of whether that third party purchase qualified Plaintiff as a 'consumer' under the VPPA.

Hunthausen v. Spine Media, LLC, No. 3:22-cv-1970, ECF No. 24, at 5 (S.D. Cal. June 21, 2023) (emphasis added). Thus, as is facially apparent, the allegations *Spine Media* differ greatly from those here where Plaintiff has expressly alleged he is a subscriber. ECF No. 62, at 3 (citing Compl. ¶¶ 12, 46); 9-10.

As was the case when Plaintiff opposed Defendant's motion, the great weight of authority supports a finding that *in this case* Plaintiff is a "subscriber" and, therefore, a "consumer" under the VPPA. See *Harris v. Public Broadcasting Serv.*, No. 1:22-cv-2456, 2023 WL 2583118 (N.D. Ga. Mar. 20, 2023); *Goldstein v. Fandango Media, LLC*, No. 22-cv-80569, ECF No. 57 (S.D. Fla. Mar. 7, 2023); *Feldman v. Star Trib. Media Co.*, No. 22-cv-1731, 2023 WL 2388381 (D. Minn. Mar. 7, 2023); *Belozerov v. Gannett Co.*, No. 22-cv10838, 2022 WL 17832185 (D. Mass.

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Dec. 20, 2022); *Epoch Times*, 2022 WL 17069810 (S.D.N.Y. Nov. 17, 2022); *Lebakken v. WebMD, LLC*, No. 1:22-cv-644, 2022 WL 16716151 (N.D. Ga. Nov. 4, 2022); *Boston Globe*, 2022 WL 4329373. *See also Louth v. NFL Enters. LLC*, No. 1:22-cv-405, 2022 WL 4130866 (D.R.I. Sept. 12, 2022) (Google Pixel). *Contra Carter v. Scripps Network, LLC*, No. 22-cv-2031 (PKC), 2023 WL 3061858 (S.D.N.Y. Apr. 24, 2023); *Martin v. Meredith Corp.*, No. 22-cv-4776, 2023 WL 2118074, *2 (S.D.N.Y. Feb. 17, 2023).

Thus, Defendant's attempt to slather itself in *Spine Media* can be, and should be, ignored.

Respectfully submitted,

/s/ *Michael L. Murphy*

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